**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
JAIPUR BENCH, JAIPUR.**

S. B. CIVIL MISC. APPEAL NO. 1674/2004

THE NEW INDIA ASSURANCE CO. LTD.
v
SH. RAM NARAYAN JAT & ANR.

S. B. CIVIL MISC. APPEAL NO. 1675/2004

THE NEW INDIA ASSURANCE CO. LTD.
v
SH. CHAGANA RAM JAT & ORS.

Date of Judgment: 14th September, 2006

Hon'ble Mr. Justice R. S. Chauhan

Ms. Manju Jain , for the appellant.
Mr. Sandeep Mathur for the respondents.

By Court:

Although both these appeals arise out of two different awards, both dated June 30, 2004, but the appeals are based on the same factual matrix and raise idental legal issues. Therefore, both the appeals are being decided by this common judgment. The appellant, the New India Assurance Co. Ltd. has challenged the said two awards passed by the Workmen Compensation Commissioner, Jaipur.

The brief facts of the case are that Heera Lal Jat was the driver on truck, bearing registration No. RJ19 -G 0993,

while Ram Narain Jat was working on the said truck as a 'Khalasi (Cleaner). On 9.10.2003, the said truck met with an accident near village Khariya Mithapur under P.S. Bilara, District Jodhpur. Consequently, Heera Lal Jat expired and Ram Narain Jat broke both of his feet below the ankle. Since Heera Lal Jat's family members, which included his aged parents and his minor son, suddenly lost the sole bread earner of the family, they filed a claim petition before the Workmen Compensation Commissioner for a compensation of Rs. 4,15,960/-. Meanwhile Ram Narain Jat also filed a claim petition before the same Workmen Compensation Commissioner for a compensation of Rs. 5,37,600/-. Both the claim petitions were decided by two separate awards dated 30.6.2004. In the first award passed in the case of Chagna Ram, the learned Commissioner granted a claim of Rs. 4,10,200/- alongwith an interest @ 9% per annum. The said amount was directed to be deposited within a period of 30 days and in case the said amount was not deposited within the said period then 15% interest per annum had to be paid on the said amount. Likewise, in the second case of Ram Narain Jat, the learned

Commissioner awarded a compensation of Rs. 1,34,400/- alongwith interest. In case the said amount was not deposited within a period of thirty days, a penal interest was imposed. Hence these appeals before this Court.

Ms. Manju Jain, learned counsel for the appellants Insurance Company, has argued that firstly, unless there is a specific condition in the policy placing a burden on the Insurance Company to pay the interest on the compensation award, the liability for the payment of interest cannot be imposed on the Insurance Company. However, despite the absence of such condition in the Insurance policy, the learned Commissioner has imposed the liability of payment of interest on the Insurance Company. Secondly, according to the learned counsel there is no provision in the Workmen Compensation Act which empowers the Commissioner to impose penal interest in case the amount is not deposited within the stipulated period. Therefore, the imposition of penal interest is illegal. In order to support this contention, she has relied upon the case of National Insurance Co. Ltd. Vs. Keshav Bahadur & Ors. (2004 (2) TAC 1 (SC)).

On the other hand, Mr. Sandeep Mathur, the learned counsel for the respondents, has argued that infact a particular clause has to exist in the insurance policy absolving the Insurance Coompany from the liability of payment of interest. Only then, the liability of payment of interest cannot be imposed on the Insurance Company. But, in the present case, there is no stipulation absolving the Insurance Company from its liability to pay the interest. Hence, the learned Commissioner has rightly imposed the liability on the Insurance Company. In order to support his contention, the learned counsel has relied upon the case of Ved Prakash Garg Vs. Premi Devi and Others (1998 ACJ 1) and on the recent case of New India Assurance Co. Ltd. Vs. Harshadbhai Amrutbhai Modhiya & Anr. (2006 (2) T.A.C. 321 (S.C.)).

We have heard both the learned counsels and perused the impugned awards.

The issue whether the Insurance Company is liable for the payment of interest on the compensation amount or not, is no longer res integra. The said issue has been discussed

recently by the Apex Court in the case of Harshadbhai Amrutbhai Modhiya (supra). According to their Lordships of the Hon'ble Supreme Court, unlike the requirement of provisions of the Motor Vehicle Act, there is no provision in the Workmen Compensation Act for an employer to take up the Insurance policy. The only prohibition contained in Workman Compensatin Act is contained in Section 17, which deals with a contract or agreement between a workman and employer. According to the said Section, a contract or agreement whereby a workman relinquishes any right of compensation from the employer for personal injury arising out of or in the course of employment shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act. Hence, the workman is not permitted to contract out of and to waive the liability of an employer under this Act. But, the employer and the Insurance Company are free to contract the terms of the Insurance as per their own volition. According to their Lordships of the Supreme court, it is for the Insurance Company to expressly state its non-liability for the payment of interest payable under the

Workmen Compensation Act. Unless such a stipulation is made, the Insurance Company will be held liable for such payment. In the case of Harshadbhai (supra), the insurance Company had clearly expressed its intention by incorporating a stipulation in the Insurance policy for non-payment of the interest. Under those circumstances, the Apex Court had held that the Insurance Company would not be liable. In the case of Ved Prakash Garg (supra), the Apex Court had clearly stated that where the Insurance Company has insured the employer-owner of the vehicle against the compensation under the Workman Compensation Act, it would be liable for the payment of the interest upon imposition against the employer. In the present case before us, the learned counsel for the Insurance Company has not been able to prove that the Insurance Company had expressly stipulated its non-liability for the payment of the interest. According to the Insurance policy, there is no such stipulation. In the absence of such stipulation, the Insurance Company is liable to pay the interest as directed by the learned Commissioner.

However, it is true that under the Workman

Compensation Act, no provision empowers the Commissioner to impose a penal interest on the Insurance Company, in case the compensation awarded is not deposited within the stipulated period. In case the amount is not deposited a penalty can be imposed upon the employer, but not upon the Insurance Company. However, the learned counsel for the respondents informs this Court that the compensation amount was paid within the stipulated period. Therefore, this part of the direction for payment of penal interest need not be interfered with. Although this Court is of the opinion that penal interest cannot be imposed on an insurance company, under the peculiar circumstances of this case, this court refrains from interfering with direction for the payment of penal interest.

In the result, these appeals are without merit. They are, hereby, dismissed.

(R.S. CHAUHAN) J.

MRG.